

1 **UNITED STATES DISTRICT COURT**
2 **SOUTHERN DISTRICT OF TEXAS**
3 **HOUSTON DIVISION**

4 JOE RICHARD POOL, III, * 4:19-CV-02236
5 ET AL *
6 *
7 V. * 11:14 A.M. to 11:52 A.M.
8 *
9 CITY OF HOUSTON, ET AL * JULY 1, 2019

10 **HEARING ON MOTIONS**
11 **BEFORE THE HONORABLE VANESSA D. GILMORE**
12 **Volume 1 of 1 Volume**

13 **APPEARANCES**

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PROCEEDINGS

THE COURT: Joe Pool, et al v. City of Houston.
All right. Who is here for Joe Pool and Trenton Pool?

MR. ROSSI: Your Honor, Paul Rossi. I submitted
a pro hac vice on Friday. Thank you very much, by the
way.

THE COURT: Did I sign that already?

MR. ROSSI: Yes, you have. We got out an order
on the pro hac vice and --

THE COURT: Yes, I see it. I see it.

MR. ROSSI: And thank you very much, Your Honor.
And also, my colleague, Austin Whatley.

THE COURT: Say that again.

MR. WHATLEY: Austin Whatley for the plaintiffs.

THE COURT: Austin Whatley. Okay. I see it.
All right. And for the City of Houston, please?

MS. CHAUVIN: Suzanne Chauvin for the City of
Houston.

THE COURT: Ms. Chauvin.

MS. PEDDIE: Collyn Peddie for the City of
Houston.

THE COURT: And Ms. Peddie.

All right. So we are here this morning on the
plaintiffs' motion for a temporary restraining order
against the City of Houston. Who is going to go?

1 Mr. Rossi?

2 MR. ROSSI: Mr. Rossi, yes, Your Honor.

3 THE COURT: Okay. Let me ask -- first of all, I
4 just want to make sure that I know the lay of the land in
5 terms of where we are.

11:15:56

6 Oh, you know what, I can't get to my computer. Byron,
7 I can't get to my computer with my leg. Give me a pad.

8 (Sotto voce discussion between counsel.)

9 THE COURT: Pardon me?

11:16:12

10 MR. ROSSI: I hadn't introduced myself.

11 THE COURT: Oh, y'all haven't met, huh?

12 MR. ROSSI: I was just introducing myself.

13 THE COURT: That was going to be one of my
14 questions. I guess I was trying to figure out had you all
15 ever spoken to each other at all? There seemed to be some
16 indication in something that I read in one pleading or
17 another that there had been some preliminary discussions
18 about this before you guys filed a motion for temporary
19 restraining order and that there were -- there was some
20 attempt to reach some sort of agreement.

11:16:40

21 Did that happen or not?

22 MR. ROSSI: It did not happen, Your Honor,
23 because --

24 THE COURT: It did not?

11:16:46

25 MR. ROSSI: It did not happen.

1 THE COURT: Okay.

2 MR. ROSSI: Some of the conditions that they were
3 adding to the affidavits we felt were too severe.

4 THE COURT: No. I mean, did you all talk?

11:16:56

5 MR. ROSSI: We did talk.

6 MS. CHAUVIN: Yes, Your Honor.

7 THE COURT: You said that did not happen and then
8 you started talking about what happened. So you all did
9 talk?

11:17:02

10 MS. CHAUVIN: Mr. Rossi -- we did not talk with
11 Mr. Rossi. We spoke with Mr. Najvar.

12 THE COURT: Najvar. His name is on here.

13 MS. CHAUVIN: He is lead counsel.

14 THE COURT: He is the lead counsel.

11:17:14

15 MS. CHAUVIN: He is lead counsel in the --

16 THE COURT: Oh, okay.

17 MS. CHAUVIN: And we called Mr. Najvar. The
18 complaint was filed on Friday. The brief was filed on
19 Friday. We called Mr. Najvar on Monday --

11:17:20

20 THE COURT: Okay.

21 MS. CHAUVIN: -- and offered to reach an
22 agreement, tried to reach an agreement along the lines
23 of -- you know, we have told them we do not intend to
24 enforce any provision that essentially the Supreme Court
11:17:35 25 has found to be unconstitutional.

1 THE COURT: Well, did you tell him that in
2 writing?

3 MS. CHAUVIN: Your Honor, I have my
4 correspondence with him and I have my proposed -- my
11:17:44 5 letter to him with some proposed language, but he
6 indicated -- well, we had some further discussions, and he
7 presented us with some language. We modified it, sent it
8 back to him. And essentially, he indicated he would not
9 be satisfied.

11:17:56 10 THE COURT: Okay. So you guys did go back and
11 forth on some potential language --

12 MS. CHAUVIN: Yes, Your Honor.

13 THE COURT: -- to make sure that we address the
14 issue that we know is unconstitutional?

11:18:06 15 MS. CHAUVIN: Yes, Your Honor.

16 THE COURT: The voting requirement?

17 MS. CHAUVIN: Yes, Your Honor.

18 THE COURT: But you all never reached any
19 agreement?

11:18:11 20 MS. CHAUVIN: Correct, Your Honor.

21 THE COURT: I was trying to figure it out. It
22 looked like y'all had talked, but I wasn't quite sure. I
23 was, like, did they talk? Did they not talk? What was
24 happening?

11:18:19 25 MR. ROSSI: Correct, Judge.

1 THE COURT: Have any signatures on the proposed
2 balloting initiative already been secured?

3 MR. ROSSI: Yes, they have, Your Honor.

4 THE COURT: And who were those secured by?

11:18:32

5 MR. ROSSI: Other circulators who are residents
6 of the city, the -- the proponents of the anti-corruption
7 -- proposed anti-corruption ordinance were, in fact, told
8 that they could only circulate within -- with city
9 qualified voters in the city of Houston. That was on

11:18:48

10 their website. They have proceeded accordingly.

11 THE COURT: So they did -- so people are already
12 going out?

13 MR. ROSSI: Correct.

14 THE COURT: Been collecting signatures?

11:18:54

15 MR. ROSSI: Yes.

16 THE COURT: And the people that have been
17 collecting signatures to date are people who meet the
18 current city ordinance of residency and voting
19 registration?

11:19:03

20 MR. ROSSI: Correct, Your Honor.

21 THE COURT: Okay.

22 MR. ROSSI: They have complied. They are
23 essentially constraining themselves to the Houston charter
24 requirements because these provisions have been

11:19:13

25 aggressively enforced in the past. Obviously, securing

1 signatures that do not meet the charter requirements are
2 subject to being invalidated not only by defendants but by
3 a mandamus action thereafter.

11:19:29 4 THE COURT: Okay. So then is this only about
5 these two plaintiffs being able to personally get out on
6 the street and walk themselves as opposed to their hired
7 professional referendum signature employees?

8 MR. ROSSI: My understanding, Your Honor, from my
9 client is that the proponents will expand their circulator
11:19:46 10 base based on the TRO we receive today, if we receive a
11 TRO today.

12 THE COURT: What do you mean? They would hire
13 more circulators that were --

14 MR. ROSSI: Correct, Your Honor.

11:19:54 15 THE COURT: -- like foreign circulators that
16 didn't have residency or voter registration requirements?

17 MR. ROSSI: Correct, Your Honor. But most
18 certainly, Trent -- Trent Pool is ready today to go out
19 and start circulating for this proponent as soon as he
11:20:05 20 gets the -- if this Court grants the TRO, he will
21 immediately begin circulating petitions for the --

22 THE COURT: Himself personally?

23 MR. ROSSI: Himself personally.

24 THE COURT: Okay.

11:20:14 25 MR. ROSSI: And He is here today, if you want

1 testimony.

2 THE COURT: So it's not just about those two
3 potential foreign circulators?

4 MR. ROSSI: Correct.

11:20:18

5 THE COURT: It's about them also wanting to hire
6 other circulators who don't meet the residency and voter
7 registration requirements --

8 MR. ROSSI: Absolutely, Your Honor.

9 THE COURT: -- in addition to these two people?

11:20:31

10 MR. ROSSI: Correct, Your Honor. And for the
11 future, so that there is certainty in the law once and for
12 all that --

13 THE COURT: There is not going to be certainty in
14 the law once and for all after today. So don't even go
15 there. I am not -- I am not reaching the ultimate issue
16 of constitutionality today.

11:20:39

17 MR. ROSSI: Correct, Your Honor.

18 THE COURT: So don't try to take me there because
19 I'm not going to go there.

11:20:47

20 MR. ROSSI: I won't, Your Honor.

21 THE COURT: Okay. But to date you guys have
22 already been doing -- already been circulating with people
23 that meet the charter requirements?

24 MR. ROSSI: Yes, Your Honor.

11:20:59

25 THE COURT: Okay. And with respect to what the

1 -- the language that the city secretary proposed that they
2 would use to provide a guarantee about not invalidating
3 the signatures or pursuing potential criminal charges, did
4 you see that language in writing?

11:21:22

5 MR. ROSSI: Yes, I did, Your Honor.

6 THE COURT: And do you have a copy of it or does
7 somebody have a copy of it?

8 MS. CHAUVIN: I have a copy.

11:21:31

9 THE COURT: Because I'm really not satisfied with
10 what either of y'all have proposed. So I want to see what
11 y'all have in mind.

12 MS. CHAUVIN: I will find it. I have got
13 several. We've actually had some back and forth.

11:21:45

14 MR. ROSSI: We have attached them as an
15 exhibit --

16 THE COURT: Which one?

17 MR. ROSSI: -- to our response, Your Honor.

18 THE COURT: Oh, to the response?

19 MR. ROSSI: Right, Your Honor.

11:21:49

20 MS. CHAUVIN: They are not. The initial
21 correspondence that was sent to us before the complaint
22 was filed said nothing about any proposal. I can offer --

23 THE COURT: Hold on. Let me see what I have got.
24 I have got the defendant's response in opposition. No.

11:22:10

25 That's defendant's. And which one are you talking about,

1 Mr. Rossi? The response to the motion to dismiss?

2 MR. ROSSI: Correct, Your Honor.

3 THE COURT: Okay.

4 MR. ROSSI: Yes.

11:22:23

5 THE COURT: Which exhibit number? What exhibit
6 number is that?

7 MR. ROSSI: That was -- Your Honor, may local
8 counsel respond to your question?

11:22:33

9 THE COURT: Yes. Just tell me what exhibit
10 number it is.

11 MR. WHATLEY: Exhibits H and I. It's e-mail
12 communications between --

13 THE COURT: Okay. I've got it. Thank you.

14 MS. CHAUVIN: That was pre-lawsuit, Your Honor.

11:22:41

15 THE COURT: I understand. I am just looking for
16 some language. I have got the language that I think I
17 want, but I want to know what y'all have been talking
18 about.

19 MR. ROSSI: Fair enough. Fair enough.

11:22:49

20 THE COURT: It is kind of one of those deals
21 where y'all pulled me into this and -- is this something
22 different?

23 Byron, where did this just come from?

24 MS. CHAUVIN: That came from me.

11:22:58

25 THE COURT: Oh, I have got it. I've got it right

1 here.

2 MS. CHAUVIN: But I don't think that that one is
3 in their response.

4 THE COURT: Oh, let me see.

11:23:14

5 MS. CHAUVIN: That's also not in there. That was
6 from last Monday. Let me see if I can find the letter.
7 Yeah. Here it is. This is the letter I sent last Monday.

8 THE COURT: Oh, there is no language in the one
9 that is attached there. Hold on. Hold on. Let me see.

11:23:38

10 MS. CHAUVIN: This is the language that was most
11 recently proposed.

12 THE COURT: Okay. Oh, my God. I can't read
13 this.

14 MS. CHAUVIN: I'm sorry, Your Honor.

11:23:54

15 THE COURT: I am too old. If you want me to read
16 it, it's got to be bigger than five points.

17 MS. CHAUVIN: Your Honor, may I read --

18 THE COURT: Hold on. Hold on. I'm just trying
19 to read what I have got. Where is the language? I'm
20 trying to read this. This is just y'all talking back and
21 forth.

11:24:55

22 MS. CHAUVIN: I proffered a letter from me to
23 Mr. Najvar that I thought included language that I
24 believe -- yes. That's it.

11:25:08

25 THE COURT: Which one is that?

1 MS. CHAUVIN: It says -- it is dated last Monday,
2 June 24th. "Thank you for taking the time to talk. As
3 discussed, the following modified affidavit language to
4 address" --

11:25:17

5 THE COURT: Oh, this letter here?

6 MS. CHAUVIN: Yes, Your Honor.

7 THE COURT: Okay. Perfect. I'm trying to figure
8 out where the language is.

11:25:24

9 Byron, give her all this back so I don't get it
10 confused. There is too much stuff up here.

11 So this is just to address the potential of people
12 submitting themselves to the jurisdiction. What about the
13 language of the affidavit? What about the affidavit
14 language itself?

11:26:10

15 MS. CHAUVIN: They can cross out the language
16 that says "I have signed petition" and that will cure it.

17 THE COURT: Oh, so that's your proposal that they
18 scratch out and then they add this to subject themselves
19 to the jurisdiction?

11:26:20

20 MS. CHAUVIN: Correct, Your Honor. And I would
21 point out that the petitioners themselves prepare the
22 actual petitions --

23 THE COURT: Right.

11:26:30

24 MS. CHAUVIN: -- and do the training to the
25 extent any information --

1 THE COURT: So what was wrong with this then,
2 Mr. Rossi?

3 MR. ROSSI: Well, with respect to the subjecting
4 to jurisdiction, we would object to the waiver of service
11:26:40 5 of process upon the person. They need to know that they
6 are being called upon and they have to have some assurance
7 that Trent is being called back into Houston. And the
8 24 hours is a bit -- is a bit short, given that any kind
9 of challenge to petitions or investigation of petitions
11:27:01 10 doesn't require --

11 THE COURT: But in an election cycle, though,
12 things move fast.

13 MR. ROSSI: That's true. But 24 hours, yeah, the
14 period is, like, a seven-day review process, I believe,
11:27:11 15 correct?

16 MS. CHAUVIN: Well, actually, it's the -- the
17 secretary has 30 days, once the petitions are received, to
18 verify all of them.

19 MR. ROSSI: Yes. Yes.

11:27:19 20 THE COURT: So, basically, the lack of notice and
21 the 24-hour requirement were the two problems?

22 MR. ROSSI: It seems pretty --

23 THE COURT: Can I have this?

24 MS. CHAUVIN: Of course.

11:27:28 25 MR. ROSSI: Yes. That was -- that was our

1 primary objection with respect to the subjecting
2 themselves to the jurisdiction of the city.

3 THE COURT: Where is the lack of notice section?
4 I'm trying to find that. Oh, waiving service of process
5 upon me.

6 MR. ROSSI: Yes.

7 THE COURT: That's the section you are talking
8 about?

9 MR. ROSSI: Correct, Your Honor.

10 THE COURT: So what do you think is a reasonable
11 amount of time? 72 hours?

12 MR. ROSSI: Yes, Your Honor. We would be
13 amenable to that, Your Honor.

14 THE COURT: So if I do grant a temporary
15 restraining order, which is only good for ten days, but it
16 would only be for nine days, essentially, it would only be
17 from July 1 to July 9th, when you want to do the
18 circulation.

19 MR. ROSSI: Yes, Your Honor.

20 THE COURT: Then would you agree that any other
21 preliminary injunctive relief issue is moot after July the
22 9th because --

23 MR. ROSSI: Yes, Your Honor.

24 THE COURT: -- there wouldn't be anything else
25 for me to do, would there?

1 MR. ROSSI: Correct, Your Honor. And we would
2 have time to fully litigate the case thereafter.

11:28:57

3 THE COURT: Right. Because I already have a
4 pending motion on the case, which I'm not addressing today
5 at all because, I mean, we have motions to deal with what
6 happens after the injunction hearing.

7 MR. ROSSI: Correct, Your Honor. Yes, Your
8 Honor.

11:29:05

9 THE COURT: Okay. Which I was just thinking
10 about in terms of I wouldn't have to set a preliminary
11 injunction hearing because it would expire -- the TRO
12 would expire before it would be time to do a preliminary
13 injunction, I guess.

11:29:21

14 MR. ROSSI: Correct, Your Honor. Correct, Your
15 Honor. The timing of this hearing is perfect, actually,
16 for these purposes.

17 THE COURT: Okay. So let me ask you a question.
18 If you guys have already been doing this already since
19 June the 9th, why did you wait so long to file a TRO?

11:29:33

20 MR. ROSSI: Well, Your Honor, it hasn't
21 been since -- I don't represent the sponsors of the
22 initiative. I am -- I am specifically representing
23 Trenton Pool and Trey Pool, who want to circulate for the
24 proponents. And they were here on July 12th through 14th
25 ready to circulate, and they realized that the Houston

11:29:51

1 charter provisions, which they realize have been enforced
2 aggressively in the past, are still in the effect. So
3 they could not circulate.

4 THE COURT: Oh, okay.

11:30:01

5 MR. ROSSI: They then had -- they then reached
6 out to legal counsel. I had to find local counsel. And
7 that whole process and also drafting all the documents did
8 take about six or seven days.

11:30:14

9 THE COURT: Okay. So they only showed up to
10 become circulators on June 24th.

11 MR. ROSSI: June 12th and 14th they were here
12 wanting to circulate and they realized they could not.

13 THE COURT: Oh, I see.

14 MR. ROSSI: Yes.

11:30:19

15 THE COURT: And you filed this on June 24th.

16 MR. ROSSI: Correct, Your Honor. Because Trent
17 had been subjected to five hours of interrogation on the
18 last referendum that was circulated in Houston and it was
19 made very clear to him --

11:30:29

20 THE COURT: So why did -- if that was the case,
21 why did he wait until now to say I can't really do this
22 because I'm not a registered voter or a resident of the
23 City of Houston?

11:30:40

24 MR. ROSSI: Well, at the time -- at the time he
25 was brought into the referendum issue at the time, he did

1 circulate with a witness. He thought it was sufficient.

2 And then he was subjected to --

3 THE COURT: With somebody else? You mean with
4 somebody else?

11:30:50 5 MR. ROSSI: With somebody else. With somebody
6 else, correct. So now he is --

7 THE COURT: I've got you. So somebody else was
8 acting as the circulator actually?

9 MR. ROSSI: Correct, Your Honor.

11:30:55 10 THE COURT: Okay.

11 MR. ROSSI: Correct, Your Honor. And so now he
12 comes back into Houston and he finds out about this
13 proposed anti-corruption -- proposed anti-corruption
14 ordinance and he wants -- he shows up and he comes to
11:31:03 15 Houston.

16 THE COURT: But he already knew about the
17 charter.

18 MR. ROSSI: He did know about the charter, but he
19 informed them at the time that he was being interrogated
11:31:09 20 that this was unconstitutional. So the city has been on
21 notice beyond 1999 --

22 THE COURT: No. No. No. My issue is why are we
23 here today on the ninth hour when he already knew about
24 the charter based on his previous experience understanding
11:31:21 25 that the charter prohibited him --

1 MR. ROSSI: Well, he --

2 THE COURT: Don't start talking when you see my
3 lips still moving. If two of us are talking at the same
4 time and one of them is me, only what I'm saying is
11:31:31 5 getting taken down. So don't start talking as an attempt
6 to try to shut me up because I'm not going to stop talking
7 until I finish my question. So let me start all over
8 again.

9 If he already knew that he was going to have problems
11:31:41 10 as a circulator based on his previous experience -- this
11 isn't something he just figured out on June 24th. He knew
12 this, you are saying, from some other referendum issue; is
13 that correct?

14 MR. ROSSI: Yes, Your Honor.

11:31:54 15 THE COURT: Okay. So I guess I'm sort of
16 surprised that this is this last-minute emergency, "Oh, my
17 God. We've got to do it right now. I just figured out I
18 can't circulate petitions in the city of Houston," when he
19 already knew that this was a problem.

11:32:06 20 MR. ROSSI: He knew -- he knew it was a problem
21 back in 2014 when he informed the city that it was
22 unconstitutional during his deposition hearings.

23 THE COURT: He is a lawyer?

24 MR. ROSSI: He is not, but he a professional
11:32:16 25 circulator. So he is aware of the constitutional

1 requirements with respect to core political speech and
2 circulation of petitions, Your Honor.

3 THE COURT: Okay.

4 MR. ROSSI: He informed them at that time. So
11:32:29 5 his deposition was over. He wasn't being personally
6 prosecuted, but he was -- they were trying to invalidate
7 signatures that he had gathered because he was not a
8 registered voter of Houston. So that process ended.

9 He just found out about the anti-corruption ordinance
11:32:46 10 and came to Houston and just found out in -- on June 12th
11 or 14th that the charter provisions had not been amended
12 as he had suggested at the time.

13 THE COURT: Okay. But this TRO and what you are
14 asking from this Court today is a TRO related to these two
11:33:05 15 plaintiffs and whatever other foreign circulators that
16 they might hire with respect to this ordinance that they
17 are attempting to get on this ballot in November of 2019?

18 MR. ROSSI: Yes, Your Honor.

19 THE COURT: Okay. I just want to make sure that
11:33:21 20 I know and understand what the scope of it is. It's this
21 ordinance, this ballot initiative, and this circulation
22 period that ends on July the 9th is what we're dealing
23 with?

24 MR. ROSSI: Correct, Your Honor.

11:33:34 25 THE COURT: Okay. So I'm on to you guys.

1 MS. CHAUVIN: Yes, Your Honor.

2 THE COURT: So, Ms. Chauvin, it seems that the
3 city has conceded the issue of the unconstitutionality of
4 the voter registration requirement, correct?

11:34:24

5 MS. CHAUVIN: Absolutely, Your Honor.

11:34:37

6 THE COURT: But because of the way that our
7 charter is written, it doesn't sort of delineate between
8 voter registration and residency. They are all kind of
9 subsumed together. So for all intents and purposes we're
10 dealing with all of the charter language because even
11 though you make a point of saying in your response that
12 you are basically going to concede the residency issue,
13 even though you think that it is an open issue, there is
14 really nothing that you can do about it, based on the way
15 that our charter is written, correct?

11:34:50

16 MS. CHAUVIN: Except that we can -- we have
17 suggested some language to them, and we have offered to
18 have --

11:34:59

19 THE COURT: Suggested some language to the
20 charter?

21 MS. CHAUVIN: No. No. To the plaintiffs here to
22 get past the TRO issue so that we can --

23 THE COURT: Okay. That's not where I am. I'm on
24 the legal issue.

11:35:08

25 MS. CHAUVIN: Okay.

1 THE COURT: I'm on the legal issue.

2 MS. CHAUVIN: The Fifth Circuit has not addressed
3 the residency requirement.

11:35:14

4 THE COURT: I know. But there is -- it's sort of
5 like a pointless gesture of conceding on the residency
6 issue when the voter registration and the residency are
7 sort of all wound up together in our charter, right?

8 MS. PEDDIE: Your Honor, if I may respond.

9 THE COURT: Sure. Ms. Peddie.

11:35:27

10 MS. PEDDIE: Your Honor, on the first footnote of
11 our response there is a reference --

12 THE COURT: What page is that on?

13 MS. PEDDIE: -- that we filed. There is a
14 reference to --

11:35:35

15 THE COURT: What page?

16 MS. PEDDIE: It should be page -- the first page
17 of the text.

18 THE COURT: Footnote 3? No. Response to the
19 defendant's motion -- oh, I'm looking at the response to
20 the motion to dismiss.

11:35:47

21 MS. PEDDIE: Yes. Our opposition.

22 THE COURT: I'm looking at the wrong thing. I'm
23 so sorry. Defendant's opposition.

11:35:57

24 MS. PEDDIE: It's Footnote 2 on the summary of
25 argument, the *Lee v. Smith* case.

1 THE COURT: Right.

2 MS. PEDDIE: It says that we do have some leeway
3 in terms of adjusting our requirements for what, you know,
4 will invalidate a petition and what won't. So we have the
5 ability to modify the language a bit because --

11:36:14

6 THE COURT: Modify the language of what?

7 MS. PEDDIE: Of the jurat --

8 THE COURT: Okay.

9 MS. PEDDIE: -- that's attached to the -- that's
10 attached to the petition because the whole concern of
11 having all of these is just to make sure that we can get
12 somebody back before us.

11:36:25

13 THE COURT: I understand. I understand what the
14 whole reason is. But given that that is an important
15 governmental concern and an important governmental issue
16 to be able to make sure that you enforce the legitimacy of
17 these, why is our charter still written in a way that
18 lumps residency and voter registration together so that
19 the whole thing becomes unconstitutional by default just
20 because there is no way to split it apart?

11:36:38

11:36:56

21 MS. CHAUVIN: Your Honor, this is 1913 charter or
22 these are 1913 provisions.

23 THE COURT: Okay. And so, like, what does that
24 mean?

11:37:05

25 MS. CHAUVIN: Well, what that means is that in

1 order to change them, you have to have a city-wide
2 election to revise them.

3 THE COURT: Okay. And don't we have those every
4 couple of years?

11:37:15 5 MS. CHAUVIN: We do. However, let me point out
6 that *Buckley* was not an issue at all in the HERO petition,
7 the situation in which Mr. Pool was deposed. And he was
8 not a circulator. He was primarily doing training. He
9 was asked some questions.

11:37:32 10 But the bottom line is the issue in HERO was not
11 whether circulators could or could not be citizens of
12 Houston or registered voters. The issue in HERO was
13 whether the signatures were fraudulent.

14 THE COURT: I know. But I'm not even there yet.
11:37:50 15 I'm way before you even get to that. I'm at a more basic
16 thing. Has the city not looked at this issue and looked
17 at the charter and said, gee, this looks kind of messed up
18 in light of *Buckley*. I think that we should not have this
19 voter registration requirement on here because it's
11:38:06 20 unconstitutional.

21 MS. PEDDIE: Your Honor, if I may respond. There
22 are -- sadly, there are many provisions in our charter
23 that the Court has probably -- the Court is involved in
24 one of them, in the same sex marriage case which the Court
11:38:18 25 had.

1 THE COURT: Right.

2 MS. PEDDIE: The mayor issued a directive saying
3 that our prohibition on giving benefits to same sex
4 married couples, you know, was unconstitutional in light
5 of *Windsor*.

11:38:31

6 THE COURT: Okay.

7 MS. PEDDIE: And so that provision was not
8 enforced. A directive was issued to --

9 THE COURT: Not enforce it anymore. I remember
10 what happened.

11:38:38

11 MS. PEDDIE: And Judge Lake issued an injunction
12 saying that we can't get rid of that.

13 THE COURT: I've got you. Okay. All right. So
14 let me stop nitpicking on that issue. It was just
15 something that just -- you know, obviously, you have to
16 concede the unconstitutionality of the charter based on
17 the fact that it's all kind of wrapped up together. Okay.
18 Somebody did it in 1913. There was a governmental
19 interest in doing and having language in there that
20 protected against potential fraud and the collection of
21 signatures and I get all that.

11:38:50

11:39:03

22 So the other issue, I guess, in reading your response,
23 it almost seemed like you were saying -- and correct me if
24 I'm wrong on this because maybe I just misread it. It
25 seemed like you were saying, oh, the plaintiff should just

11:39:21

1 go ahead and sign and verify the petition, commit perjury,
2 and we'll just wink and nod and look the other way and we
3 won't enforce the -- we won't enforce the charter
4 requirements, we won't take off any signatures as a result
11:39:37 5 of it, and we won't prosecute them for perjury. Trust us.
6 Trust us. We're the government. We're here to help.

7 MS. PEDDIE: No, Your Honor.

8 THE COURT: Is that what you were saying?
9 Because I was, like, are they saying just go ahead and
11:39:49 10 sign the affidavit the way that it is? Is that what y'all
11 were suggesting?

12 MS. PEDDIE: No, Your Honor. What we were first
13 saying is don't commit perjury, number one. That is
14 number one.

11:39:59 15 Number two, what we have said -- and I think that
16 Mr. Rossi has mischaracterized the facts. He has the
17 facts, and he has packaged them up in a way that is not
18 correct.

19 THE COURT: Well, I can read; and I think pretty
11:40:13 20 good, too.

21 MS. PEDDIE: Well, you do. You do. But I want
22 to make sure that -- and you were -- frankly, in your
23 questions of him, you were doing probably better than we
24 were. So we were happy to let you do that.

11:40:22 25 But what Mr. Rossi has suggested is that somehow we

1 enforced this in the past. We haven't enforced this in a
2 long time. If you look at the evidence that he submits,
3 the city's motion on what we wanted to reject -- the basis
4 on which we rejected petitions, it was when there wasn't a
5 signature. It wasn't ever based on residency, and it
6 wasn't based on voter registration.

7 THE COURT: Well, that is small comfort when the
8 potential penalty for perjury is a criminal prosecution.
9 That's some small comfort. I mean, that's like me saying,
10 well, I have sped down Allen Parkway for the last 30 years
11 and have never got stopped for speeding. So I'm pretty
12 confident that if I speed when I go home this afternoon
13 I'm going to be good.

14 MS. PEDDIE: Your Honor, again, we're not
15 advocating that they committed perjury. We are simply
16 saying that if they sign as the -- attesting that those
17 are the signatures that they have, that's going to be good
18 enough because of the *Buckley* issue. I think to go
19 back --

20 THE COURT: Well, I guess it's just not good
21 enough for me. I mean, I don't like either one of your
22 proposals. I don't like the proposal of just scratching
23 through the language that you don't like in the jurat, and
24 I don't like the proposal of the city that is just go
25 ahead and sign it the way that it is or scratch through it

1 or whatever and we won't prosecute you for perjury and we
2 won't get rid of any of the signatures on your referendum
3 initiative because we haven't done it before and y'all are
4 going to be okay. It's going to be good.

11:41:50

5 MS. PEDDIE: Your Honor, there is a third option,
6 which is the one we propose, which is to cross out the
7 language on there and then attach something like the
8 proposed language that we have included.

11:42:03

9 THE COURT: Okay. Well, I will tell you that is
10 a third option of crossing out the language and then
11 putting completely new language and that's my solution.

11:42:18

12 MS. PEDDIE: Your Honor, I think it's the best
13 solution, in part because there have been cases, which
14 we've attached, I think it's at Footnote 4, which we've
15 attached, which have suggested that that language is an
16 option that the Courts have said that a residency
17 requirement does not pass constitutional muster and they
18 on both sides have suggested that that kind of language,
19 subjecting yourself to the jurisdiction of the court is a
20 more narrowly-tailored option.

11:42:38

21 THE COURT: Well, I think we need language in two
22 areas. I think we need language subjecting themselves to
23 the jurisdiction of the court. That's one issue. But I
24 also think that we need language that is injunctive in
25 nature that discusses what we have discussed here that

11:42:53

1 indicates that the Court is issuing a TRO because the
2 charter is unconstitutional, as worded, and that there is
3 the potential for irreparable injury. There is eminent
4 harm because we have only got these nine days left that we
5 have got to deal with everything.

11:43:12

6 So based on all of that, I think that a TRO is
7 warranted, but I would like -- I'm going to add language
8 in -- I'm going to require that there be language
9 addressing the subjecting yourself to the jurisdiction of
10 the Court as well as language that establishes or at least
11 sets out that this Court has ordered that these foreign
12 circulators that are not residents of the City of Houston
13 and not registered to vote can, in fact, submit on this
14 referendum issue for this period of time. I'm going to
15 read you the language, and I'm going to give you the
16 language in writing. In fact, here --

11:43:33

11:43:58

17 You know what, do you have my extra copy for me?

18 Well, I'm going to read it to you, and then I will
19 give it to you. So this is what it is going to say:

20 By order of the United States District Court entered
21 July 1, 2019, I certify that I am a foreign circulator who
22 is either not a resident of the city of Houston or is not
23 registered to vote in the city of Houston. I have been
24 granted authorization by the district court to serve as a
25 professional circulator to collect signatures from July 1

11:44:08

11:44:21

11:44:44

11:44:55

11:45:13

11:45:30

11:45:45

1 to July 9, 2019. I hereby subject myself to the
2 jurisdiction of the courts of Texas in connection with any
3 fraud associated with the circulation of any referendum or
4 the collection of signatures for any referendum circulated
5 in the city of Houston during the time period of July 1,
6 2019 to July 9, 2019. I understand that the city of
7 Houston is temporarily enjoined from enforcing the
8 residency or voter registration requirements or rejecting
9 the signatures on the petition because I have not signed
10 the affidavit required by the city charter -- I should say
11 -- attesting to residency and voter registration.

12 And then there is going to be a signature line.

13 Give me that other thing I just gave you. No. No.

14 Yeah. That one.

15 And then there is going to be a signature line that is
16 going to read substantially like the proposed language.

17 I, first being duly sworn on oath depose and say that
18 I am a citizen of the United States or documented
19 permanent resident. I have never been convicted of a
20 crime of fraud or misrepresentation. I agree to submit
21 myself to the jurisdiction of the Harris County courts and
22 waive any challenge to venue and personal jurisdiction in
23 connection with the matters encompassed by this affidavit.
24 Should the need for me to personally appear in Houston
25 arise, I agree to make myself available in person in

1 Houston at my own expense within 72 hours of a request by
2 the city concerning matters encompassed by the -- by the
3 -- no. It's going to be not by the affidavit. Well, I
4 guess it will be a new affidavit. Should it say by the
5 affidavit because they are not going to actually sign
6 that?

7 MS. CHAUVIN: We want to make sure that they
8 attest to the fact that this individual signing the
9 petition was actually that person. That's what the --

10 THE COURT: Oh, we need to add that affidavit,
11 that attestation language.

12 MS. PEDDIE: That's the money language for us.

13 THE COURT: Yeah. Yeah. Yeah. That's got to go
14 into my initial language, doesn't it?

15 MS. PEDDIE: Yes.

16 THE COURT: Where is that language in one of
17 these documents? Tell me where that language is in one of
18 these documents, please, somebody.

19 MS. CHAUVIN: It was not in the letter. It's in
20 their petition -- yeah. The exhibit that's in the
21 petition. If nothing more, it was in the unreadable.

22 MS. PEDDIE: Your Honor, I have a copy of the
23 form from the --

24 THE COURT: Let me see that.

25 MS. PEDDIE: -- from the charter.

1 THE COURT: Let me see that. I need to add that
2 language.

3 MS. PEDDIE: It should be the last sentence of
4 that.

11:46:59

5 THE COURT: The last sentence of?

6 MS. PEDDIE: Section 3, form of the petition,
7 there is a jurat. Do you see it?

8 THE COURT: Right.

9 MS. PEDDIE: And the last sentence of that --

11:47:07

10 THE COURT: Each signature to said petition --
11 no. No. No. Each signature to said petition shall be
12 proof of knowledge as required by petitioners by
13 Article 9, Section 3 of this charter --

14 MS. PEDDIE: No. No. No. Where it says State
15 of Texas, County of Harris.

11:47:22

16 THE COURT: Oh, down here.

17 MS. PEDDIE: Just the jurat part.

18 THE COURT: The statements -- no. Each signature
19 appearing -- so it starts with "each signature," huh?

11:47:34

20 MS. PEDDIE: Right.

21 THE COURT: Each signature appearing thereto --
22 I'll change this. It's going to be on the -- appearing on
23 the what? On the ballot initiative or on the referendum?

24 MS. PEDDIE: On the petition.

11:47:52

25 MS. CHAUVIN: I think it's called petition.

1 THE COURT: On the petition?

2 MS. PEDDIE: Yes.

3 MS. CHAUVIN: Yes.

4 THE COURT: Each signature appearing on the
11:47:59 5 petition was made in my presence on the day and date it
6 purports to have been made and I solemnly swear the
7 statement is a genuine signature of the person whose name
8 it purports to be.

9 So that language needs to be added to the bottom of
11:48:11 10 the language that I put. And then we need to add -- do
11 you see where I am? And then -- so then there is an
12 affidavit. So then "affidavit" would still be the right
13 language here.

14 MR. ROSSI: Yes.

11:48:39 15 THE COURT: Make myself available in person at my
16 own expense within 72 hours of a request by the City of
17 Houston concerning matters encompassed by the affidavit.
18 I further depose and say that each such signature herein
19 was made in my presence.

11:48:53 20 Well, I wonder should we put that here or at the end
21 of the other language? We don't need it twice.

22 MS. PEDDIE: Your Honor, for clarity's purpose,
23 although I am told by our general counsel's office, like
24 stapling something like that to a petition makes it very,
11:49:14 25 very difficult for the city secretary's office to do it.

1 But it might be easier, since you are going to have some
2 people out there rummaging around, that it's in the
3 complete document.

11:49:28

4 THE COURT: I know. Just where? Do you want --
5 here. Let me give you this.

6 Where is my language? Give me mine.

11:49:45

7 Okay. Look at this. I was either going to add it --
8 that's just two copies of the same thing. That's just
9 what I read you. I was either going to add that jurat
10 language or that affidavit language at the end of that
11 paragraph or at the end of this additional, basically,
12 affidavit. That's the injunctive language that I want to
13 be included because that's going to allow them to scratch
14 out the entire jurat paragraph that's ordinarily on there.
15 That language is what I want substituted. And then -- but
16 I also put in there I was going to add that language about
17 the --

11:50:05

18 Let me see this. No.

11:50:23

19 I was going to add the language about each signature
20 being made in my presence. I wanted to know, do you want
21 it at the end of the paragraph that I propose or at the
22 end of this affidavit paragraph that they are going to be
23 signing? Probably at the end of this one.

24 MS. PEDDIE: Probably at the end of that one.

11:50:36

25 THE COURT: Right. All added to the end of mine.

1 Right. That's where it goes.

2 MR. ROSSI: Yes. Correct. That's consistent
3 with how this is handled in every other jurisdiction in
4 the country, Your Honor.

11:50:46 5 THE COURT: Exactly. That's fine. Okay. That's
6 fine. So then both of those paragraphs are going to have
7 to be on there?

8 MR. ROSSI: We would agree with that, Your Honor.

9 THE COURT: The one that I just gave you and then
11:50:55 10 this additional paragraph with this language is already
11 included on the bottom here. So this and this. I just
12 was trying to make sure. I thought it wasn't here. They
13 want it here. The signature line goes right here. Okay.
14 Are we all good?

11:51:34 15 MR. ROSSI: Yes, Your Honor.

16 THE COURT: I'll have you a final full order in
17 about 15 minutes.

18 MR. ROSSI: That's good. That is better than any
19 other --

11:51:42 20 THE COURT: I wrote a full opinion on it --

21 MR. ROSSI: Okay. Thank you.

22 THE COURT: -- because I thought that you would
23 want to see all of the issues that may have some -- it
24 will be relevant to things that we have to do after this.

11:51:50 25 MR. ROSSI: Yes.

1 THE COURT: So I decided I would go ahead and
2 write a full opinion. You will have a full opinion. The
3 only thing I was waiting to figure out is what language I
4 was going to put in so this will all look nice and to make
5 sure we write it down. So give me 15 minutes to do that.
6 It will be e-mailed to your office as a final order, and
7 you'll see it very shortly. And you can go out and beat
8 the streets of Houston circulating the anti-conspiracy
9 whatever petition he wants to send out.

10 MR. ROSSI: All right. Thank you, Your Honor.

11 THE COURT: Thank you, guys.

12 MR. ROSSI: We appreciate it.

13 MS. CHAUVIN: Thank you, Your Honor.

14 THE COURT: All right. Bye-bye.

15 *(Proceedings concluded at 11:52 a.m.)*

16 *Date: August 30, 2019*

17 ***COURT REPORTER'S CERTIFICATE***

18 *I, Laura Wells, certify that the foregoing is a*
19 *correct transcript from the record of proceedings in the*
20 *above-entitled matter.*

21
22 */s/ Laura Wells*

23 *Laura Wells, CRR, RMR*
24
25

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